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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
	)	
Treatment of Operator Services Under Price Cap Regulation	)	CC Docket No. 93-124
	)	
Revisions to Price Cap Rules for AT&T	)	CC Docket No. 93-197

ERRATUM

On December 11, 1995 Bell Atlantic filed its comments in this proceeding. Due to a clerical error, the filing included fifteen duplicative pages. Attached please find the corrected "Comments of Bell Atlantic" minus the pages which were erroneously included. Please substitute this copy for the one filed yesterday.

Respectfully Submitted,

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December 12, 1995

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COMMENTS OF BELL ATLANTIC

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Introduction and Summary

This rulemaking[1] presents an historic opportunity for the Commission to embrace the changes happening in the world around it and to eliminate unnecessary regulations that impede competition and ultimately harm consumers and competitors alike. The Commission already has recognized the revolution occurring in the technology and markets it oversees. The Commission must now recognize that the time for creeping incremental reform is past. In today's rapidly changing and increasingly competitive environment, the decades-old regulatory structure inherited by the Commission is outdated, anticompetitive and ultimately anti-consumer. It must be fundamentally overhauled.

While incremental adjustments to the existing regulations are superficially easy, they perpetuate inefficiencies and distortions inherent in the current rules. Both the House and Senate recognized this in their overwhelming passage of legislation that would rewrite fifty years of communications laws. In both versions of the Telecommunications Reform Bill, legislators have demonstrated a clear preference for less regulation, more competition and encouragement of new services. In order to avoid being an impediment to new service introduction and increased competition, the Commission must recognize that fundamental changes are also needed in the current rules for the introduction, pricing and subsequent treatment of local exchange carrier ("LEC") interstate services. Most of

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1 Second Further Notice of Proposed Rulemaking in CC Docket No. 94-1, Further Notice of Proposed Rulemaking in CC Docket No. 93-124, and Second Further Notice of Proposed Rulemaking in CC Docket No. 93-197 (rel. Sept. 20, 1995) ("Second Notice").

these changes will benefit the market regardless of the level of competition. The remaining changes are necessary to set a proper framework to facilitate removal of unnecessary regulation as competition continues to grow.

First, the Commission must immediately eliminate its distinction between dominant and non-dominant service providers. As Professors Richard Gilbert and Robert Harris make clear in their attached joint affidavit, and as the Commission itself recently recognized, the advance notice requirements associated with dominant carrier regulation make no sense for any company, but are affirmatively anticompetitive when applied to the largest provider of a particular service. This means the Commission should immediately allow tariffs for new services, new service options, or alternative pricing plans to be filed on one day's notice without cost support.

Second, the Commission must eliminate additional impediments for new services and lower prices by eliminating price regulation of these same services. As Professor Alfred Kahn, the nation's preeminent regulatory economist previously testified, such regulation is unnecessary and only succeeds in inhibiting the introduction of new services and denying customers the resulting benefits. Specifically, this means elimination of the superfluous and outdated Part 69 waiver process. It also means that these new services should not have price cap restrictions imposed upon them. Instead, the market should dictate the success or failure of the service or promotion. Such a rule change will also facilitate the offering of contract tariff packages to accommodate end-user customers that have more individualized needs.

Third, the Commission should remove price regulation from all remaining services just as soon as there are competitive alternatives available. This does not mean waiting until uneven regulation forces a LEC to yield significant market share. Instead, the stanaard for removal of price regulation should be grounded in the presence of competitive providers with a real ability to limit price. The LECs should also have the flexibility to define the relevant scope of services to be removed from price caps -- whether based on geography, service or customer-segment. Predetermined geographic or service definitions are unlikely to match the actual pattern of competition experienced by an individual LEC and it would be harmful for the Commission to make a prejudgment here.

Finally, for the time services remain in price caps, the Commission should reform its price cap rules to encourage competition.[2] This means the Commission should allow downward pricing flexibility without restrictions. It would be truly anticompetitive for the Commission to perpetuate rules that forbid or penalize price reductions. The Commission should also restructure its price cap baskets to facilitate the transition from price caps. Specifically, it should include in its interexchange basket all services, including all operator services, that compete with interexchange services. Such a grouping will not only ease the transition to competitive pricing, it will allow the

[2] While not part of this proceeding, the Commission should also move forward on Chairman Hundt's commitment to reform interstate access charges to further level the competitive playing filed. Specifically, Carrier Common Line rates should be reduced and offset by increases in the Subscriber Line Charge. *See* Speech by Reed Hundt presented to the United States Telephone Association (Nov. 2, 1995).

Commission to implement a productivity offset that levels the playing field for these services.

These reforms are necessary to effectuate the goals of this proceeding. Indeed, encouraging new services will inevitably have the impact of providing consumers with more choice at lower prices. Many commenters will nonetheless advocate a "go slow" approach that superficially sounds safer. There is no truly safe course in a revolution, however, and failure to adopt economically appropriate policy changes are far more harmful than imposing new rules that ignore economic truths. The Commission must resist the "easy" solutions that perpetuate unfair and harmful regulations.

The harm from policies that inequitably penalize one industry segment and slow or prevent their new services from reaching market cannot be undone. In a prior filing, Professor Harris outlined the "drastic failures" of non-adaptive regulatory policies in the railroad industry.[3] While regulatory reform has "revitalized" the railroad industry, it was only after the industry was in "financial and physical ruin."[4] The Commission must

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3 ***Price Cap Performance Review for Local Exchange Carriers***, CC Docket 94-1, Reply Comments of the United States Telephone Association ("USTA"), Attachment 1 -- Report on LEC Price Cap Reforms by Robert Harris at 7-10 (filed June 29, 1994) ("Harris Affidavit").

4 ***Id.*** at 8-9.

avoid similar mistakes by adopting the fundamental reforms listed here. Given the potential impact, the Commission cannot do less.

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BELL ATLANTIC [5] COMMENTS

This rulemaking presents an historic opportunity for the Commission to embrace the changes happening in the world around it and to eliminate unnecessary regulations that impede competition and ultimately harm consumers and competitors alike. The Commission already has recognized the revolution occurring in the technology and markets it oversees. The Commission must now recognize that the time for creeping incremental reform is past. In today's rapidly changing and increasingly competitive environment, the decades-old regulatory structure inherited by the Commission is

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[5] The Bell Atlantic telephone companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; and Bell Atlantic-West Virginia, Inc.

outdated, anticompetitive and ultimately anti-consumer. It must be fundamentally overhauled.

Specifically the Commission should eliminate its distinction between so called "dominant" and non-dominant service providers. The means that tariffs for new services, new service options, and alternative pricing plans should be authorized to be filed on one day's notice without cost support. The Commission should also eliminate price regulation for these same services. This means that these new services should not have price cap restrictions imposed upon them and the superfluous and outdated Part 69 waiver process should be eliminated. Price regulation for all remaining services should be removed just as soon as there are competitive alternatives available. The standard for removal should be grounded in the presence of competitive providers with a real ability to limit price. The LECs should also have the flexibility to define the relevant scope of services to be removed from price caps -- whether based on geography, service or customer-segment. Finally, for the time services remain in price caps, the Commission should allow downward pricing flexibility without restrictions and should modify the interexchange basket to include all operator services that compete with interexchange services. These rule changes would truly meet the dramatic changes in the market and provide the greatest benefit for telecommunications provider and customer alike.

I. The Revolution is Here

Static regulation with only incremental adjustments has no place in the revolution that is occurring today. As understood by Chairman Hundt, "[t]he communications revolution is for the 21st century what the industrial revolution has been for the last several hundred years: a destroyer of the status quo, an inelectable force for change, a source of fear and turmoil, a harbinger of a higher quality of life."[6] The immediacy and importance of this revolution has been recognized by both the Administration[7] and Congress.[8] Most dramatically, with overwhelming majorities in both the House and the Senate, Congress is rewriting fifty years of communications laws to reduce regulation, encourage competition and encourage new services.[9]

Indeed, fundamental changes have already taken place in telecommunications. Since 1988, telecommunications technology has "advanced substantially" and competition has extended into the market for local services.[10] "New telecommunications

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6 "Arm in Arm, We Welcome the Communications Revolution," Speech by Reed Hundt, Columbia University Third International Training Conference for Telecommunications Regulators (Oct. 20, 1995).

7 "We've all become used to stumbling over clichés in our efforts to describe the enormity of the change that is now underway and the incredible speed with which it is taking place. Often we call it a revolution -- the digital revolution. . . . The word revolution by no means overstates the case." Remarks as Delivered by Vice President Al Gore to the Superhighway Summit, Royce Hall, UCLA (Jan. 11, 1994).

8 Congressman Jack Fields refers to this year's telecommunications bill as a "telecommunications revolution bill." ***Broadcasting & Cable***, June 26, 1995, at 24.

9 ***See*** H.R. Rep. 204, 104th Cong., 1st Sess. 47 (1995) ("H.R. 1555. . .promotes competition and reduces regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourages the rapid development of new telecommunications technologies); S. 652, 104th Cong., 1st Sess. § 4 (1995) ("This Act is intended to establish a national policy framework designed to accelerate rapidly the private sector deployment of advanced telecommunications and information technologies and services to all Americans . . .).

10 ***Amendment of Part 69 of the Commission's Rules Relating to Private Networks and Private Line Users of the Local Exchange***, CC Docket No. 87-530, Order, ¶ 3 (rel. Nov. 7, 1995).

services, such as advanced applications using the Internet, have proliferated."[11] Not surprisingly, the regulation of access services has also changed including the advent of open network architecture, expanded interconnection, and the transport rate restructure.[12]

At the same time, the pace of competition has accelerated. As Bell Atlantic and others demonstrated in the prior filings in the price cap review docket, LECs face competition in every major market area in the country.[13] This is particularly true in concentrated areas such as those served by Bell Atlantic.[14] While competition has continued to expand in the interim,[15] the competitive terrain for interstate access services -- the relevant markets for Commission consideration -- has fundamentally altered in the short time since those comments were filed.

Most significantly, AT&T -- the largest customer for access services -- has shifted from years of denying any intent to compete with LECs' local and access services[16] to a

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11 *Id.*

12 *Id.*

13 ***See*** Affidavit of Richard E. Beville in Support of Comments of Bell Atlantic, CC 94-1 (filed May 9, 1994) ("Beville Affidavit"); Harris Affidavit at 12-13; Peter W. Huber, ***The Enduring Myth of the Local Bottleneck*** (attached to ex parte letter of Pacific Telesis Group, dated Mar. 15, 1994).

14 Beville Affidavit at ¶ 3 & Exhs. 1 & 3.

15 For example, competitors' facilities (collocation and fiber) cover customers accounting for approximately 50% of Bell Atlantic's total interstate revenues.

16 "We have repeatedly stressed that AT&T is not interested in re-entering the local telephone business . . ." AT&T press release (Aug. 16, 1993) (quoting AT&T Chairman Robert E. Allen).

declaration of competitive war.[17] To carry out that war, it is reported that "AT&T will unveil a partnership with one or more so-called alternative access providers, allowing it to bundle local, long distance, and cellular services, even, possibly, cable TV and enhanced features such as voice mail -- into a single AT&T brand offering."[18] Indeed, AT&T is already testing joint marketing of its services with those of Continental Cablevision.[19] AT&T's shift not only presents a competitive alternative with vast financial resources and a customer base larger than any LEC, but suggests that LECs could face imminent loss of their largest access customer, potentially endangering a majority of their access revenues.

MCI and Sprint have been similarly busy. MCI will buy as much as $600 million in equipment this year alone as part of its $2 billion effort to place fiber-optic loops in the most lucrative markets in order to provide "one-stop shopping for local and long distance telephone, data and video services."[20] Sprint has joined into an alliance with major cable television providers that would give it direct access to millions of customers homes.[21]

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[17] "We will fight for the right to give our customers a choice for local service through every option open to us -- that includes reselling local services, using alternate providers and building our own telephone network facilities." AT&T press release (Oct. 26, 1995) (quoting AT&T Chairman Robert E. Allen).

[18] "Ma Bell Rides Again," Business Week at 42 (Nov. 13, 1995).

[19] Under the trial taking place in the Chicago area, customers of both companies are eligible for substantial discounts including free HBO services and periods of free long distance calling. AT&T press release (Nov. 13, 1995).

[20] G. Naik, "MCI Plans to Buy Equipment to Offer Local Phone Service," Wall Street Journal at B6 (Mar. 6, 1995).

[21] "Sprint alliance with TCI, Comcast and Cox will spend $2.3 billion over next 3 years building competitive local service using cable systems and Sprint brand name." Communications Daily at 2 (Mar. 30, 1995).

This proceeding represents the Commission's opportunity to bring the antiquated regulatory structure it inherited into line with today's environment. While the Second Notice recognizes the problems, it offers solutions that are, at best, only incremental improvements over the status quo. The Commission should take this historic opportunity to correct its rules so that new and competitive services are encouraged.

II The Commission Should Eliminate Its Affirmatively Anticompetitive Dominant/Non-Dominant Distinction

The Commission should not continue to impose lengthy advance notice requirements and other regulatory burdens only on so-called "dominant" carriers -- a policy that economists, the courts and the Commission itself agrees is harmful to competition. While telegraphing prices and costs to competitors is competitively harmful under any circumstance, it is particularly harmful when required of only those carriers deemed to be "dominant" in a market. As a result, the Commission should eliminate its disparate filing requirements for dominant and non-dominant carriers.

In authorizing AT&T to file tariffs on one-day notice with no cost support, the Commission understood that the prior requirements "functioned more as hindrances to true rivalry than as consumer safeguards."[22] It simply makes no economic sense to make the largest provider of a service give advance notice of its costs and prices prior to launching a new service or promotion. Such notice facilitates the creation and

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22 ***Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier***, FCC 95-427, Order, Separate Statement of Commissioner Susan Ness (rel. Oct. 23, 1995) ("AT&T Non-Dominance Order").

maintenance of a "price umbrella" that allows smaller competitors to price higher than they would had they not had the benefit of such competitive intelligence.[23] For example, one large customer of Bell Atlantic found that competitive access providers ("CAPs") had "very carefully calculated" their price quotes so that each quote was "exactly the same percent less than Bell Atlantic's price."[24]

The Supreme Court also has suggested that it makes no "sense" to require the firm "most likely to be a price leader" to file costs and rates in advance.[25] Indeed, it has pointed out that voluntarily sharing the very pricing information that the Commission ***requires*** dominant carriers to file could spark enforcement of the antitrust laws absent government compulsion.[26]

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23 As explained by Professor Paul MacAvoy, that is exactly what happened in the long distance industry: "Regulatory conditions in markets for long-distance telecommunications clearly changed in directions that favored acceptance of AT&T's tariffs as the benchmark and of stability in market shares based on adherence to that tariff." "The filing of tariffs as specified under the price cap plan allowed other carriers the opportunity to obtain advance information on any change in AT&T's complete pricing plans." P. MacAvoy, ***The Failure of Antitrust and Regulation to Establish Competition in Markets for Long-Distance Telephone Companies***, Yale School of Management Working Paper Series C, No. 44 at 93 (Nov. 1995).

24 J. Haring and H.M. Shooshan, ***Universal Competition in the Supply of Telecommunications Services: Eight Customer Perspectives***, p. 35 (dated Feb. 8, 1995) (quoting the Director of Telecommunications Planning and System Design at Marriott International, Inc.) ("Universal Competition Study").

25 ***MCI Telecommunications Corp. v. American Telephone and Telegraph***, 114 S. Ct. 2223, 2233 (1994). ***See also Southwestern Bell Corp. v. Federal Communications Commission***, 43 F.3d 1515, 1520 (D.C. Cir. 1995) (expressing support for the economic sense of the Commission's arguments that no tariffs should be required for non-dominant carriers, but citing the Supreme Court view that the logic applies even more strongly to dominant carriers.)

26 ***MCI Telecommunications Corp. v. American Telephone and Telegraph***, 114 S. Ct. 2223, 2233 (1994).

Eliminating the advance notice and cost support filing requirements unquestionably lowers regulatory costs and reduces the time for new services to get to market. There is simply no sound economic basis for requiring a competitive test as a prerequisite for eliminating the advance notice and cost support requirements for tariff filings. On the contrary, as explained in the sections below, eliminating the lengthy advance notice requirements imposed only on so-called "dominant" carriers would create no risks to justify continuing the existing process.

III. Commission Rules Should Encourage New Service Introduction By *All* Companies By Eliminating Regulatory Barriers

The Telecommunications Act requires that the Commission must "***encourage*** the provision of new technologies and services to the public."[27] Despite this requirement, the current rules delay the introduction of new interstate services by the LECs, and serve to affirmatively ***discourage*** the development of new technologies and services. In order to facilitate its statutory mandate and provide the benefits of new technologies and services to consumers, the Commission must remove the regulatory hurdles it now imposes on bringing a new service to market.

1. Eliminate the Part 69 Waiver Requirement

As set forth above, the telecommunications industry is undergoing revolutionary changes and today's marketplace for interstate access services resembles the market in

[27] 47 U.S.C. § 157 (a) (emphasis added).

the early 1980's in only the most superficial sense. Despite this fact, the current rules still require LECs to summit to a pre-approval process before even filing a tariff for any new switched access service that does not conform to a generic pricing structure established more than a decade ago. Indeed, the standard for approval of a Part 69 waiver includes a requirement that the service "was not anticipated when the Part 69 Rules were adopted."[28] The existing Part 69 waiver process is both unsound policy and unlawful and must be abolished.

From a policy perspective, the harm of this superfluous waiver requirement is not just the regulatory waste. Part 69 waivers have no preset time limit. The result is a process that has taken more than a year and a half for some services and on average takes more than eight months before a tariff can even be filed.[29]

The impact of that harm is not surprising. Delay of new services means that customers lose new choices and LECs lose business opportunities.[30] Even a few months delay in the introduction of a new service can mean the difference between success and failure for a new service, and creates a significant disincentive to introduce the service in

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[28] ***See, e.g., Ameritech Operating Companies, et. al, Petitions for Waiver of Sections 69.4(b) and 69.106 of the Commission's Rules***, 9 FCC Rcd 7873, ¶ 25 (Com. Car. Bur. 1994).

[29] ***See, e.g., The Bell Atlantic Telephone Cos. Petition for Waiver of Sect. 69.112 of the Commission's Rules To Offer Facilities Management Service***, DA 94-374 (filed April 4, 1994) (pending for more than 18 months). As of November 20, Bell Atlantic's price cap era average wait for action on a Part 69 waiver was 8.4 months.

[30] ***See*** Affidavit of Richard J. Gilbert and Robert G. Harris at ¶ 8-9, 12-15 (attached hereto at Tab 1) ("Affidavit of Gilbert and Harris").

the first place.[31] As a result, the built-in delay can well mean that customers ***never*** receive the opportunity to purchase the new service. For example, new services introduced by Bell Atlantic have overwhelmingly been services that are not subject to a Part 69 Waiver requirement.[32] Given that many of these new services were Special Access services that could have had a Switched Access equivalent,[33] it is clear that the waiver requirement has had a chilling effect on new services.

At the same time, elimination of the waiver requirement creates no regulatory concerns. To the extent there are legitimate complaints about specific new service offerings, they are more effectively dealt with in the complaint process, where the details of the service offering will have already been spelled out in a tariff, and where problems can be resolved without delaying or derailing the introduction of the service.

From a legal perspective, the waiver requirement unlawfully circumvents specific time limits mandated in the Communications Act. Under the Act, the Commission is specifically forbidden from requiring more than 120 days notice for a new service charge.[34] The current Commission rules, however, require a period that exceeds this limit

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31 Indeed, one study found that even a six month delay -- shorter than the normal Part 69 Waiver delay -- will result in a loss of one third of the lifetime profits for a potential service. Affidavit of Gilbert and Harris at n.5.

32 Only 12% of Bell Atlantic's new service filings have been subject to a waiver requirement.

33 For example, while special access SONET and FMS service are available, waivers are still pending for the switched access counterparts of these services. ***The Bell Atlantic Telephone Cos. Petition for Waiver of Parts 69.110, 69.111 and 69.112 of the Commission's Rules to Offer IntelliLight Services and SALT*** (filed Feb. 22, 1995); ***The Bell Atlantic Telephone Cos. Petition for Waiver of Sect. 69.112 of the Commission's Rules To Offer Facilities Management Service***, DA 94-374 (filed April 4, 1994).

34 47 U.S.C. §§ 203(b)(1), 203(b)(2)

before a LEC is even authorized to ***file*** a tariff for the proposed service. The result is to unlawfully circumvent the statute by creating a pre-tariff review process designed to defeat the statutory time limit.[35] And, by placing the burden on the LEC to justify a waiver, the existing process flies in the face of the legal admonition that new services be encouraged with the burden of proof on those arguing that a new service is inconsistent with the public interest, rather than the company proposing the new service.[36]

2. Eliminate Price Regulation of New Services and Alternative Pricing Plans

The Commission should immediately remove price regulation on new services, new service options and alternative pricing plans. Not only is there no reason to make a competitive showing before obtaining such relief, it would be anticompetitive to establish such a requirement. Removing these services from price regulation mean that tariffs for these services will be filed on one day's notice with no cost support -- as they should be for all services -- and that further price changes will not be subject to the price cap rules.

While one-day tariffs should be allowed for all services, this result is especially appropriate in the case of new services.[37] Tariff reviews of Bell Atlantic services have

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[35] ***See MCI Telecommunications Corp. v. AT&T***, 114 S. Ct. 2223, 2231 (1994) ("... an agency's interpretation of a statute is not entitled to deference when it goes beyond the meaning that the statute can bear..."). Moreover, even apart from the specific time limits on tariff filings, the Act requires Commission review of any new service be resolved within one year. 47 U.S.C. § 157(b). The current waiver process, which has no time limit, in form and in practice violates this rule as well.

[36] 47 U.S.C. § 157(a).

[37] ***See*** Gilbert and Harris Affidavit at ¶¶ 16-19.

delayed introduction of new services as much as 83 days[38] and 45 days on average (in addition to the typical 45 day notice period). Ironically, customers suffer the brunt of the harm from these delays

Moreover, often delays occur where no legitimate concerns are raised.[39] To the extent some services never are brought to market because of these delays, the harm to customers is even greater. Regardless, the Commission retains jurisdiction under the complaint process to deal with any concerns raised by potential competitors or customers.[40] The difference is that the service will be available to customers in the meantime.[41]

Likewise, removing these services from price regulation creates no regulatory concerns to offset the clear public benefit from encouraging the development of these

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[38] ***See, e.g.***, Bell Atlantic Tariff FCC No. 1, Trans. Nos. 700, 740 & 751.

[39] For example, Bell Atlantic's Group Link Video was introduced to compete with established providers of the service including AT&T and Sprint. Bell Atlantic demonstrated that its proposed rates were at or below those of other competitors. Nevertheless, Bell Atlantic's tariff was delayed two months beyond the forty-five day delay inherent in the notice rules because of a meritless complaint by a potential competitor that the proposed rates were too high. ***See Bell Atlantic Telephone Companies, Revisions to Tariff F.C.C. No. 1***, Trans. No. 776, Order (Com. Car. Bur. rel. Aug. 17, 1995); ***see also Bell Atlantic, Revisions to FCC Tariff No. 1,*** Trans. No. 772, DA 95-1565, Order (Com. Car. Bur. rel. July 14, 1995) (service delay on complaint of a single competitor).

[40] 47 U.S.C. § 208(a) ("Any person . . . complaining of anything done or omitted to be done by any common carrier subject to this Act . . . may apply to said Commission by petition.")

[41] Moving disputes to the complaint process will also have the beneficial effect of reducing the number of frivolous filings by reducing the incentive of those parities that "game" the regulatory process by filing objections that have no other purpose than to delay the introduction of a competitive service.

services.[42] New services are discretionary by definition.[43] If the service is overpriced or otherwise flawed, the market will reject the service. To the extent the market accepts the service, it means that customers believe they are better off buying a service at the tariffed rate than not buying the service. For alternative pricing plans, potential buyers will continue to have the original tariffed service as an option. They will only buy the new service to the extent they are better off.

Once a new service is being offered, the Commission should not impose price regulation, regardless of the level of competition. As Professor Alfred Kahn, the dean of regulatory economists, explained in the first comment round of this proceeding:

> The logic of extending the deregulation of all effectively competitive services to all new services -- whether or not subject to effective competition -- is straightforward. To the extent that services are truly new, the conception of monopoly power in their provision is of dubious meaning or significance. New services offer customers additional alternatives not available to them previously. In the broader sense, therefore, their introduction is fundamentally competitive rather than a monopolistic phenomenon, . . .
>
> There is no reason to deny an innovator the rewards of being first -- denial would inhibit innovation -- and it should not matter whether the innovator is an LEC or a new entrant.[44]

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42 ***See*** Gilbert and Harris Affidavit at ¶ 20.

43 ***See*** Affidavit of Alfred E. Kahn at ¶ 30, attached to Reply Comments of Bell Atlantic, CC 94-1 (filed June 29, 1994) ("Kahn Affidavit") (attached hereto at Tab 2). The only potential exception to this rule are mandated interconnection services. While customers of these services are also better off getting the service to market faster, and retain the ability to challenge a rate once the service introduced, the Commission may nonetheless wish to leave such new services subject to price regulation to prevent price increases.

44 ***Price Cap Performance Review for Local Exchange Carriers***, CC Docket 94-1, Reply Comments of Bell Atlantic, Affidavit of Alfred E. Kahn, ¶¶ 30-31 (filed June 29, 1994); ***see also*** Gilbert and Harris Affidavit at ¶ 20.

The same logic holds for alternative pricing plans -- "optional discounted offerings of services that have been, and continue to be provided."[45] So long as the original service remains price controlled -- either through regulation or competition -- the alternative pricing plan should not be price regulated. Customers will only buy from the alternative pricing plan if the plan makes them better off than had they continued with the original service. No matter what the alternative pricing plan terms, no customer is worse off than they would have been if the option had not been available.[46]

Reforming the regulation of new services and alternative pricing plans will have other pro-competitive ancillary benefits. It would allow LECs to introduce term and volume discounts. These discounts are an efficient pricing mechanism that are almost universally employed in other industries.[47] It is perverse logic to argue that no customers should be able to take advantage of these discounts unless all customers can do so. If some receive the discounts they are better off, and the customers who do not qualify or do not choose to participate are no worse off. Moreover, the Commission requires that common carrier services be available for resale, which provides an opportunity to effectively aggregate customers so that all can qualify for the discounted price.[48] This potential price arbitrage eliminates any remaining concern that term and volume

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45 Second Notice, ¶ 54.

46 Gilbert and Harris Affidavit at ¶ 20.

47 *Id.*, ¶ 23; Affidavit of William E. Taylor at ¶ 25, attached as Exhibit A to Reply of Bell Atlantic, Tariff FCC No. 1, Trans. No. 741 (filed March 6, 1995) ("Taylor Dover Affidavit").

48 ***See Regulatory Policies Concerning Resale and Shared Use of Common Carrier Services and Facilities***, 60 FCC 2d 261 (1976), ***aff'd American Telephone and Telegraph Co. v. FCC***, 572 F.2d 17, ***cert. denied***, 439 U.S. 875 (1978).

discounts can cause ***unreasonable*** price discrimination.[49] LEC competitors who complain about term and volume discounts only wish to perpetuate regulatory impediments to more aggressive pricing.

Similarly, reforming the regulation of new services should include allowing LECs to engage in contract pricing -- tariff packages of multiple services that are designed to meet specific end-user consumers needs. Absent such authority, these needs are either met by other companies -- who frequently are not the most efficient provider -- or not met at all.[50] Allowing LECs to respond to their customers' needs is distinctly pro-consumer and pro-competitive.[51] Moreover, as with other optional services, no customer is harmed from the addition of new service packages.[52]

IV Price Regulation Should Be Removed As Soon As There is a Competitive Alternative Present.

To the extent competition acts as a check on price, there is no basis for continued price regulation. The Commission has recognized that price cap regulation only needs to

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49 ***See*** Taylor Dover Affidavit at ¶ 28.

50 As the Commission recognized for AT&T, it retains statutory authority to ensure that rates are just, reasonable and non-discriminatory and, in the context of a complaint or enforcement proceeding, can require the filing of the underlying contract to ensure that contract tariffs reflect the underlying agreements and do not violate core regulatory concerns. AT&T Non-Dominance Order, ¶ 132.

51 ***See, e.g.,*** Universal Competition Study at 37 (director of Telecommunications Planning & System Design for Marriott International notes that while Marriott would like to find vendors to provide telecommunications services at competitive prices "[t]he current tariff structure impacts [Marriott's] ability to meet that goal.").

52 ***See*** Gilbert and Harris Affidavit at ¶¶ 20, 23.

be left in place until competition is present.[53] To honor that principle, the Commission must establish a mechanism that quickly reacts to remove price regulation wherever a competitive alternative is available.

1. Existing Services for Which Competitive Alternatives Are Available Should be Removed From Price Regulation Immediately, and Additional Services Should Be Removed As Soon As Competition Becomes Available

When customers have one or more potential alternative service providers, these competitors provide a market-based check on prices.[54] So long as the potential provider has the capability and willingness to offer a competitive service, super normal pricing is checked by the market. As a practical matter, that is the only necessary test to eliminate continued price regulation. This concept, sometimes called "addressability", is similar to the "uncommitted entrant" concept in the 1992 Department of Justice/Federal Trade Commission Horizontal Merger Guidelines.[55] The Guidelines treat the uncommitted entrant as if it were an actual supplier because it imposes a competitive check on prices.[56] If price become too high, the uncommitted-entrant will enter the market at a price level lower than the incumbent.

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53 *See Price Cap Performance Review for Local Exchange Carriers*, 10 FCC Rcd 8961, 65-66 (1995).

54 *See* Kahn Affidavit at 13-14; ***and see*** Gilbert and Harris Affidavit at ¶¶ 26-28.

55 *See* Gilbert and Harris Affidavit at ¶ 33.

56 *Id.*

The proof offered to show that a particular service area has a competitive alternative available may vary depending on the information available in that market. The Commission can set some predetermined benchmarks to limit the scope of inquiry. Evidence of price stability or decline, low entry barriers, existence of actual competitors and sophisticated customer base all are signs that a market is subject to competition. Of course, direct evidence of a competitors' presence is the best evidence. If 25% of a market is addressable, that is sufficient to act as a price check on the entire market.[57] As explained by Professors Gilbert and Harris, in that situation, the LEC would have to raise prices at least 25% to recover the loss of those customers -- an action that would spur further competitive losses.[58] In the fast moving telecommunications market, a competitor will expand to fill the market as soon as a LEC raises its prices above competitive levels. At that point, the Commission must step back and allow the competitive marketplace to function.

Indeed, as Bell Atlantic has previously demonstrated, there are already a number of services that have competitive alternatives and should therefore be removed from price cap regulation immediately. Video dialtone service is being introduced as competition to established cable operators that already make service available to over 95% of United States' households.[59] Bell Atlantic's high capacity services (DS1 and DS3) already have

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57 *Id.*; ***see also*** Affidavit of Richard Schmalensee and William Taylor, attached to Comments of USTA, CC 94-1 (filed Dec. 11, 1995).

58 Gilbert and Harris Affidavit at ¶ 34.

59 Paul Kagan Assoc., Marketing New Media, p. 3 (Aug. 16, 1993) (98% of U.S. television households are passed by cable); Affidavit of Robert W. Crandall at ¶¶ 8-9, attached to Reply Comments of Bell Atlantic, CC 94-1 (filed May 17, 1995).